IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13597 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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Whether Reporters of Local Papers may
1 be allowed to see the judgment ?
To be referred to the Reporter or not
2 ?
Whether their Lordships wish to see
3 the fair copy of the judgment ?
Whether this case involves a substantial question of law as to the
4 interpretation of the constitution of India, 1950 or any order made thereunder ?
Whether it is to be circulated to the
5 civil judge ?

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HAIDERALI @ HAIDER TAKLU IMAMALI SAIYED -

Petitioner(s)

Versus

STATE OF GUAJRAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :

MS KRISHNA U MISHRA for Petitioner(s) : 1,

RULE SERVED BY DS for Respondent(s) : 1 - 2.

GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 30/08/2005

ORAL JUDGMENT

1. The order of detention dated 22.06.2005 passed by the respondent no.2 Commissioner of Police, Ahmedabad City, Ahmedabad, is challenged in this petition under article 226 of the Constitution of India.

2. One of the main contentions raised in this petition, while challenging the order of detention passed under Sub-section 2 of Section 3 of Gujarat Prevention of Anti-social Activities Act, 1985 (for

short, 'the PASA Act'), by the learned counsel for the petitioner is that the impugned order of detention is illegal and invalid on the ground that while passing the order, the detaining authority has relied on solitary incident of registration of crime against the detenue vide I-C.R.No.5072 of 2004 dated 06.03.2004 registered with Meghani Nagar Police Station under the provisions of sections 66(b), 65 (a) (e), 81, 116(b) and 99 of the Bombay Prohibition Act.

3. As per the submissions made by the learned counsel for the advocate such solitary incident registered against the detenue cannot be said to be disturbing the public order or the general health of the people at large. It does not have potential to disturb the even tempo of the public life and under no other circumstances the activities as alleged to have been carried out by the detenue is prejudicial to the public health or public order. In support of the above submissions, the learned counsel for the petitioner has relied upon the dated 18.08.2005 passed in Special Civil

Application No.11733 of 2005 in the case of Balkarsing @ Shamshersing S/o. Bhalsing Jat (Chaudhry) Vs State of Gujarat and others. Relying upon the aforesaid order, Smt Banna Dutta, learned advocate for the detenue has submitted that alleged antisocial activities cannot be said to have bearing on the maintenance of the public order or the general health of the public and simply a crime is registered, it cannot form a relevant material for arriving at the subjective satisfaction by the Detaining Authority that though the petitioner is a bootlegger, required to be detained under the provisions of the Act.

4. Mrs. Hansha B. Punani, learned Assistant Government Pleader has tried to support the order of detention but could not dispute the release of co detenue by this court vide order dated 18.08.2005 as stated in the earlier para.

5. Considering the facts and rival submissions and on perusal of the records of the case and the order dated 18.08.2005 passed in Special Civil

Application No.11733 of 2005, I am inclined to accept the submissions of learned advocate for the detenue that registration of solitary crime for the offences punishable under the Bombay Prohibition Act by itself cannot said to have bearing or nexus on the disturbance of the public order or the general health of the public and, therefore, the decision reported in 2004 (1) GLR 864 and the ratio laid down therein can be reasonably applied in the facts of the present case also.

6. As laid down by several decisions of this Court it is required to be noted that only in such case where activities of the detenue cannot be curbed by invoking remedies under ordinary potential laws and such antisocial or criminal activities are disturbing the public order, in such cases only the concerned authority can take recourse to the statute framed for preventive detention of the person and not otherwise.

7. In the present case, considering all the facts, it is evident that the solitary incident of crime

under the provisions of Bombay Prohibition Act do not constitute sufficient ground for arriving at subjective satisfaction by the detaining authority in absence of any other material, and, therefore, the order of detention dated 22.06.2005 passed by the respondent no.2 herein is hereby ordered to be quashed and set aside.

8. The detenue Haiderali @ Haider Taklu Imamali Saiyed is ordered to be set at liberty if not required in any other offence by any other authority.

9. Rule is made absolute. Direct service is permitted.

(ANANT S. DAVE, J.)

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